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MONTANA LEGISLATIVE HISTORY

Chapter 478 1989

Bill H 544 S _____ Original bill & history ___C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 16	✓ C	Hearing Date(s) Mar 18	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Feb 16	✓ C	Mar 18	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

	TRANSMITTED TO SENATE		
2/28	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
3/13	HEARING		
3/20	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED AS AMENDED	28	8
3/27	3RD READING CONCURRED	34	15
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	92	0
4/01	3RD READING AMENDMENTS CONCURRED	92	1
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/11	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 495 EFFECTIVE DATE: 4/11/89		

HB 543 INTRODUCED BY CONNELLY, ET AL.
ALLOW PARTIAL PAYMENT FOR RETIRED HIGHWAY PATROL OFFICERS' HEALTH INSURANCE PREMIUMS

2/02	INTRODUCED		
2/02	REFERRED TO STATE ADMINISTRATION		
2/03	FISCAL NOTE REQUESTED		
2/08	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
2/14	HEARING		
2/15	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/17	FISCAL NOTE REQUESTED ON 2ND READING COPY		
2/18	2ND READING PASSED	58	38
2/20	TAKEN FROM ENGROSSING		
2/20	REREFERRED TO APPROPRIATIONS		
2/27	REVISED FISCAL NOTE RECEIVED		
3/02	REVISED FISCAL NOTE PRINTED		
3/07	HEARING		
3/20	HEARING		
3/22	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	67	27
3/23	3RD READING PASSED	71	21
	TRANSMITTED TO SENATE		
3/27	REFERRED TO STATE ADMINISTRATION		
3/31	HEARING		
4/06	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED	45	1
4/10	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/11	2ND READING AMENDMENTS CONCURRED	86	11
4/12	3RD READING AMENDMENTS CONCURRED	85	12
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 627 EFFECTIVE DATE: 7/01/89		

HB 544 INTRODUCED BY RICE
EXPAND SCOPE OF STATE'S APPELLATE RIGHTS IN CRIMINAL CASES

2/02 INTRODUCED
2/02 REFERRED TO JUDICIARY
2/16 HEARING
2/16 COMMITTEE REPORT--BILL PASSED
2/18 2ND READING PASSED 86 9
2/21 3RD READING PASSED 90 7

TRANSMITTED TO SENATE
2/28 REFERRED TO JUDICIARY
3/17 HEARING
3/20 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/21 2ND READING CONCURRED 49 0
3/23 3RD READING CONCURRED 48 0

RETURNED TO HOUSE WITH AMENDMENTS
3/31 2ND READING AMENDMENTS CONCURRED 90 0
4/01 3RD READING AMENDMENTS CONCURRED 91 1
4/06 SIGNED BY SPEAKER
4/06 SIGNED BY PRESIDENT
4/06 TRANSMITTED TO GOVERNOR
4/08 SIGNED BY GOVERNOR
CHAPTER NUMBER 478 EFFECTIVE DATE: 4/08/89

HB 545 INTRODUCED BY SCHYE, ET AL.
EXEMPT "AGENT ORANGE" PAYMENTS FROM INDIVIDUAL INCOME TAXATION

2/02 INTRODUCED
2/02 REFERRED TO TAXATION
2/03 FISCAL NOTE REQUESTED
2/07 FISCAL NOTE RECEIVED
2/08 FISCAL NOTE PRINTED
2/08 HEARING
2/28 COMMITTEE REPORT--BILL PASSED
3/02 2ND READING PASSED 89 0
3/04 3RD READING PASSED 91 0
TRANSMITTED TO SENATE
3/06 REFERRED TO TAXATION
3/30 HEARING
3/30 COMMITTEE REPORT--BILL CONCURRED
3/31 2ND READING CONCURRED 50 0
4/03 3RD READING CONCURRED 50 0

RETURNED TO HOUSE
4/08 SIGNED BY SPEAKER
4/10 SIGNED BY PRESIDENT
4/10 TRANSMITTED TO GOVERNOR
4/14 SIGNED BY GOVERNOR
CHAPTER NUMBER 532 EFFECTIVE DATE: 10/01/89

HB 546 INTRODUCED BY JOHNSON, ET AL.
ESTABLISH VETERANS' HOME IN EASTERN MONTANA--
APPROPRIATE CAPITAL PROJECTS FUND

2/02 INTRODUCED
2/02 REFERRED TO APPROPRIATIONS
2/03 FISCAL NOTE REQUESTED
2/09 FISCAL NOTE RECEIVED
2/14 FISCAL NOTE PRINTED
3/14 HEARING

45-5-206 (1) (a);"
Renumber: subsequent subsection

Motion was seconded by Rep. McDonough and the amendment CARRIED with Rep. Knapp voting Nay.

Recommendation and Vote: Rep. Rice moved HB 578 DO PASS AS AMENDED, motion seconded by Rep. Darko and CARRIED unanimously.

HEARING ON HOUSE BILL 544

Presentation and Opening Statement by Sponsor:

Rep. Jim Rice stated that this bill is a technical house cleaning matter. In criminal cases the general rule is that the state cannot appeal, only the defendant can appeal. If he is convicted at the lower level he can appeal his conviction to a higher court and the state does not have the right to appeal unless it is a technical issue that falls under one on the sub categories of paragraph 2, 46-20-103. They are adding a sub category to cover a problem that has come up in the law and there will be other witnesses to explain it.

Testifying Proponents and Who They Represent:

John Connor, County Prosecutor's Services Bureau, Dept. of Justice, Montana County Attorney's Association
Pat Paul, Cascade County Attorney
Robert McCarthy, County Attorney, Butte Silver Bow, Immediate Past President of the Montana County Attorneys Assoc., Chairman, Legislative Committee of the Montana County Attorneys Assoc.

Proponent Testimony:

John Connor stated that this bill was requested by the County Attorneys Assoc. to correct what has become a real confounding problem to the prosecutor as they have adopted more and more statutes dealing with the mandatory minimum sentence. The legislature is responsible for passing the laws, and the courts are responsible for construing and applying those laws. When the legislature determines that something ought to be a law and that it is a mandatory obligation for the court to impose it and that is not done, then the state has no remedy. All this bill asks is the opportunity to allow them to present the issue to a higher court for examination if in fact it is determined that the appropriate mandatory minimum was not imposed or that the court acted inappropriately.

Pat Paul stated that the legislature has recognized the seriousness of certain crimes and has required minimum mandatory sentencing as a guideline to the judges and the courts in recognizing those crimes. Such crimes, for example, are sale of dangerous drugs, weapon enhancement, and persistent felony offenders. Section 46-20-103 of the Montana Codes has limited the rights of appeal to the state in certain instances. HB 544 would allow the state to appeal if they feel the judge does not follow the minimum sentencing guidelines. Without this there is no other remedy.

Robert McCarthy commented that HB 544 received the highest priority on the recommendation of the agenda of bills that the County Attorney's Assoc. is supporting. It is not because it is such a complicated bill, but an essential one. He stated that it is clear that where the legislature has directed particular minimum sentences be imposed, and if they are not, the state should have a right of appeal to insure that these sentences are imposed.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Aafedt asked Mr. Connor why the judges aren't required to do what the law says. He stated that it has bothered him for quite some time that where they have minimum mandatory sentences, those sentences are just not being imposed. Mr. Connor replied that there are various explanations for that, and he doesn't mean to impugn the integrity of the judiciary because they get a fair amount of pressure, in terms of trying to put people in jail, because of the cost and overcrowding problem at the prison. In some cases the judge doesn't feel that prison time is appropriate for whatever reasons. He does not actually have to articulate those reasons beyond just putting down in a judgement that, based upon the defendant's record, this is the sentence he is getting. Rep. Aafedt then asked what makes them think that by spending a lot of money to go to a higher court and do it all over again that they wouldn't have the same feeling. Mr. Connor stated that because judges are human too they are sensitive to the fact that their decisions are going to be reviewed, and that often times courts will make decisions along particular lines based upon whether or not there looks like there is a possibility of it being reversed on an appeal.

Rep. Brooke asked Mr. Connor where the burden of proof lies. Mr. Connor responded that it lies with the state who would have to prove the court acted irregularly. Rep. Brooke referred to the reading in the bill where it says "any may appeal from any court order" and asked Mr. Connor if he would consider municipal courts to be put in the language. Mr. Connor stated the provisions in section 46-18-201 relating to sentencing apply to lower courts as well as the district court and thinks this statute has equal application.

Rep. Brooke continued and questioned if citizens saw that there was a lack of imposition of a mandatory sentence in a court, what would be the process. Mr. Connor stated that he was unclear on the appellate process as it relates to municiple court, but could explain it as it relates to justice court. In terms of the question it would be the responsibility of the prosecutor to bring about the appeal. In criminal cases the individual citizen cannot pursue the appeal. Mr. Connor commented that if it was appealed at the local level it would be the responsibility of the county attorney. If it was from the district court to the state, the attorney generals's office would handle the appeal on behalf of the county attorneys.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 544

Motion: Rep. Rice made a DO PASS motion. Rep. Gould seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The DO PASS motion CARRIED with Rep.'s Darko, McDonough, Wyatt, Strizich, Brown, and Addy voting against the motion.

HEARING ON HOUSE BILL 668

Presentation and Opening Statement by Sponsor:

Rep. Mary McDonough, House District 89 stated that Montana was the first state in the nation to adopt a prototype confidentiality of health care information statute. This statute was a step forward in guaranteeing non-release of information in health care facilities in a manner that would violate rights of citizens. This bill is being recommended by the Dept. of Health and Environmental Sciences and relates to confidentiality requirements in a public health setting as opposed to a medical facility. HB 668 provides

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 16, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

STANDING COMMITTEE REPORT

February 16, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 544 (first reading copy -- white) do pass .

Signed: _____
Dave Brown, Chairman

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 544 DATE FEB. 16, 1989

SPONSOR REP. RICE

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Patrick Paul	Gas. Co. Atty - Mont. Co. Attys	X	
John Connor	Dept of Justice Mt. County Atty Assn	X	
Robert McCarthy	Butte-Silver Bow County Attorney Montana County Attorneys Assn	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 17, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: Senator Bob Brown

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 544

Presentation and Opening Statement by Sponsor:
Representative Jim Rice of Helena, District 43, opened the hearing. He said the bill's purpose was to expand the scope of appeal by the state by allowing for appeal from judgments that are alleged to be contrary to law.

List of Testifying Proponents and What Group they Represent:

John Connor, County Prosecutors Services
Pat Paul, Cascade County Attorney and the County Attorneys Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor said the bill responds to a frustrating situation. He told of a man who plead guilty in 1986 to 3

counts of criminal sale of dangerous drugs. The offender was given concurrent, deferred sentences on all 3 counts, said John. In 1988, John charged him with 2 counts of sale while he was still on probation. He plead guilty to those. And while he was awaiting sentencing, he was arrested by local authorities and charged with 2 more counts of sale. He ended up with 7 total counts, plead guilty to the final 4 and got suspended sentences running concurrently on all 4 of those. So, he never went to prison even though statute that specifically requires, that for the sale of dangerous drugs, the person is to receive a 2-year sentence with no probation or parole. That statute wasn't followed, said John, and there was nothing that could be done. This bill is designed to address that problem. He didn't think it would result in a considerable number of appeals. It would not be done as a matter of policy, but would make appeal possible when sentencing was felt to be inappropriate.

Pat Paul agreed with John Connor's testimony. He said the state had minimum mandatory sentencing guidelines that are not followed by judges. Apparently there is no remedy for the state, he said, to allow appeal or to seek relief from the supreme court. He feels the bill would help the situation.

Questions From Committee Members: Senator Jenkins asked if there was some way at present to take a judge to task. John Connor said this bill would allow a way. It would allow a higher court to examine at a judge's action in a particular case and decide whether that judge acted appropriately. He felt it should be done in a lawful process.

Senator Jenkins asked what would be done to a judge to make him "straighten out his act." Senator Crippen said he could be put out of office.

Senator Mazurek asked how broad the law would be. John said that being dissatisfied with the law doesn't take away all discretion to impose anywhere from zero to the maximum allowed by the statute. But in cases where mandatory minimums apply, that is a different situation and the minimum mandatory sentences should be given.

Senator Crippen said he didn't understand why there wasn't the right of appeal when the judge was ignoring a mandatory sentence. John said that mandatory minimums were the best example, but that there were other acts that a court uses in a discretionary fashion where the statute requires procedures with respect to how sentencings are to be conducted. They are not followed, either, he said. He said

he considers that contrary to law, too. He didn't differ with Senator Crippen's judgment of the situation. He said that he didn't want to use the words "and are illegal", because it might be construed as a presumption on his part. He thought the language in the bill might encompass any illegality that might occur. He said he would be happy to discuss any wording change the committee might want to consider. He just didn't want to make it too limiting, he said.

Closing by Sponsor: Rep. Rice closed saying he didn't really like the language "judgment that results in". He thought it would be better to say "imposing a sentence that is contrary to law".

DISPOSITION OF HOUSE BILL 544

Discussion: Senator Yellowtail asked about the term "alleged to be" as stated in the bill. Senator Crippen said that, when a lawyer is in court, he must use the term "alleged to be" contrary to law, rather than state an act is contrary to law.

Senator Pinsoneault asked for an opinion of amending that portion of the bill. Valencia explained that on line 45, after "is", strike "alleged to be" and insert "not consistent with mandatory sentencing procedure or as otherwise contrary to law." That would only make specific the mandatory sentencing procedure, she said.

Amendments and Votes: Senator Yellowtail MOVED to amend House Bill 544 on line 25 to delete "alleged to be". The MOTION CARRIED on a vote of 8 to 1, with Senator Crippen voting NO.

Recommendation and Vote: Senator Halligan MOVED that House Bill 544 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 578

Presentation and Opening Statement by Sponsor: Representative Jim Rice of Helena, House District 43, opened the hearing. He said that House Bill 578 was to provide legal protection for children from potential

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-17-8

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 18, 1989

MR. PRESIDENT:
We, your committee on Judiciary, having had under consideration HB 544 (third reading copy -- blue), respectfully report that HB 544 be amended and as so amended be concurred in:

Sponsor: Rice (Bailings)

1. Title, line 6.
Strike: "ALLEGED TO BE"

2. Page 1, line 25.
Strike: "alleged to be"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

DATE March 14, 1989

COMMITTEE ON Senate Judiciary 2 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
John Connor	Dept of Justice Mt. County Atty Assn	544	✓	
Patrick L. Paul	Montana County Attorneys Assoc.	HB544	✓	
Judith M Carlson	NASW	578	✓	

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-17-89 House Bill No. 544 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN		
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN.YELLOWTAIL	✓	
SEN. CRIPPEN		✓
	8 to 1	

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: D. P. Amend - Sen. Yellowtail

SF-3 (Rev. 1987)